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C O N F I D E N T I A L SECTION 01 OF 03 THE HAGUE 000271

SIPDIS

DEPARTMENT FOR S/WCI - PROSPER/RICHARD, EUR/SCE -
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SEIDENSTRICKER/MORIN, USUN FOR ROSTOW/WILLSON

E.O. 12958: DECL: FIVE YEARS AFTER ICTY CLOSURE

TAGS: BK HR KAWC NL PHUM PREL SR ICTY

SUBJECT: ICTY: NEW STRESSES IN THE MILOSEVIC TRIAL

REF: THE HAGUE 176

Classified By: Clifton M. Johnson, Legal Counselor, for reasons 1.5 b,
d

¶1. (C) Summary. The trial of Slobodan Milosevic before the International Criminal Tribunal for the former Yugoslavia (ICTY) careens towards an interesting, difficult and potentially explosive final few weeks of the prosecution's case. In terms of testimony, the biggest grenade could come in the form of the compelled February 10 testimony of Biljana Plavsic, former co-President of Republika Srpska (RS), who many in the Office of Prosecutor (OTP) believe is more likely to hurt rather than help the prosecution case. The biggest risk, however, may be less substantive than health related. While the accused has the flu, leading to a cancellation of proceedings on February 3, more significant is that Presiding Judge Richard May, the dominant figure in the courtroom, is suffering from an undisclosed illness that could require his near term departure from the Tribunal -- casting the future of the trial into question. Against this backdrop, the Milosevic prosecution team, though racked by infighting and potential personnel changes, worked to finalize its remaining witness list. During the week of January 26, it presented three expert witness who, in contrast to the drama behind the scenes, testified soberly to the crimes committed in Bosnia and the relationship between Serb and RS militaries. End summary.

Judge May Ill

¶2. (C) Embassy legal officers learned February 2 that Judge Richard May, the presiding judge in the Milosevic case, has fallen ill with what may be a serious and progressively worsening condition. Some prosecutors before his trial chamber had begun to notice some abnormalities in his behavior, such as incomprehensible statements from the bench (May is well known to be an articulate and precise speaker when presiding). Last week he received a medical evaluation, the results of which are not yet known. The situation is being considered very discretely by a small circle in the ICTY. A number of sources consider the condition serious enough that it may require May to step down from the proceedings. They are focused on "getting through" the next two weeks until the Prosecution adjourns in the hope that a substitute judge, if needed, would have the three month break to get up to speed on the case by the time Milosevic begins his defense. (Comment. Embassy legal officers had not noticed a significant change in Judge May's behavior, nor have press observers. While the reports of May's illness are credible and corroborated, until we obtain further details it will not be possible to assess the full impact of his condition on the case. End comment).

Plavsic and Perisic

¶3. (C) A trial chamber order granting the prosecution's request to add Biljana Plavsic as a witness remains under seal, though senior Tribunal leadership remained certain that she would testify against Milosevic on February 10 (originally scheduled for February 4). See reftel. Her testimony has become another point of contention between senior prosecutors on the Milosevic team, but Emboffs understand that Chief Prosecutor Carla Del Ponte has insisted on seeking the subpoena that will bring her to The Hague to testify.

¶4. (C) Embassy legal officers also learned that the courting of Momcilo Perisic ended in failure, with one prosecutor calling Perisic's interviews in The Hague "terrible." There had been some hope within OTP that Perisic -- a one-time senior military adviser to Milosevic, an important link between Milosevic and Mladic on military matters, and a potential indictee in his own right -- would provide substantial evidence against his former boss. The interviews conducted in The Hague proved otherwise, with Perisic displaying a truculence that led him to being quickly returned to Belgrade. His status as an investigative target

will be reported septel.

Personnel Changes on the Prosecution Team

15. (C) The intensity of focus on the closing weeks of the prosecution case has not distracted the lead prosecutors from their long-running clash over the prosecution itself. The main source of friction, a poisonous relationship between lead prosecutor Geoffrey Nice and senior trial attorney (for the Bosnia portion) Dermot Groome, may be coming to an end once the prosecution rests. Embassy legal officers have learned that the chief prosecutor has decided to pull Groome from the case once the prosecution rests and will ask Groome to focus attention on Stanisic and Simatovic and take control from Nice of the Perisic investigation/indictment. Groome, disappointed by the move, has asked the Chief Prosecutor to reconsider, having told her that he would not seek renewal of his contract in May should he be taken off the Milosevic team.

A Week of Expert Witnesses

16. (SBU) Dean Manning (OTP Investigator): The prosecution called OTP Investigator Dean Manning to testify about a report he prepared at the request of OTP on mass graves found in and around Srebrenica. Manning has been investigating mass graves around Srebrenica for over five years. He testified that 2541 individuals have been found in the mass graves. He noted, however, that this is an extremely conservative number because the Serbs dug up and transported bodies from primary grave sites using heavy machinery, crushing the bodies and making accurate counts very difficult. Milosevic suggested that the majority of the bodies found in the mass graves around Srebrenica were those of men killed in combat, and he asked the witness to testify as to the gender and age of the victims, as well as to acknowledge the fighting that occurred in the area. Manning countered Milosevic's assertion by testifying about the forensic evidence - noting that many of the victims were shot in the back or the head, that their posture indicated that their hands were tied, and that they often wore blindfolds from the same cuts of fabric.

17. (SBU) Reynaud Theunens (ICTY Military Analyst): The prosecution called ICTY military analyst Reynaud Theunens to testify about a report he prepared at the request of OTP that analyzed the role of the Yugoslav People's Army (JNA) in the Croatian and Bosnian conflicts, specifically on its command and control of Serbian armies, armed paramilitary and volunteer groups. Theunens testified that the JNA developed into a mainly Serb force whose goal was to consolidate Serbia's control over Serb-populated regions of Bosnia and Croatia. He stated further that this transformed JNA trained, supplied, and assumed command of local Serb forces in Croatia and Bosnia, reporting that "documentary evidence indicates that Serb TO (territory defense) units and staffs operated under single, unified command and control with the JNA." The witness further testified that JNA assistance was authorized at the highest levels of the JNA army and the Yugoslav presidency, which prior evidence has shown was controlled by Milosevic. Notably, Theunens provided documentation showing that Milosevic received a daily combat report of the army of the breakaway Serb republic, Republika Srpska Krajina (RSK), which included information on what material support had been provided to the RSK by the JNA.

18. (SBU) Theunens also testified about documentation that showed that retired and active duty JNA officials served in Serb armies in Bosnia and Croatia while continuing to receive pay, benefits, and credit for time served from the JNA. He went on to testify that JNA support was critical in Bosnia, as the breakaway Serb republic, Republika Srpska, had almost no independent war production capability. On cross examination, Milosevic tried to characterize the JNA as an intermediary that was separating warring factions in Bosnia and Croatia, trying to set the JNA apart from the actions of the Serb armies and paramilitary units. He also tried to discredit the witness, highlighting his employment by the ICTY as motivation for bias. Ultimately, however, the voluminous military documents introduced through Theunens provided significant evidence linking Serbia and the JNA to the military actions committed by Serb forces in Bosnia and Croatia. The testimony provided the Chamber with a fuller understanding of the command and coordination between the JNA and the multitude of Serb military, paramilitary, and volunteer forces in Bosnia and Croatia. Most importantly, the testimony indicated that Milosevic was far from ignorant of this huge military apparatus and was in fact influential in its decision-making.

19. (SBU) General Ferenc Vegh (Expert witness on military command and control): Like Theunens, Hungarian General Vegh

was called to testify about a report he prepared at the request of OTP, which focused on the military command and structure of the JNA army. Vegh is the former commander of the Hungarian army, and his credentials include a stint at the U.S. Army War College. The prosecution's primary interest in Vegh was his finding that Serb military and paramilitary units in Bosnia and Croatia lacked the ability to carry out independent military activities. From passing out munitions to local forces, to coordinating sophisticated offensives, Serb military and paramilitary forces required superior orders from the JNA, which he noted had become a tool for Serbia to achieve its political objectives. Milosevic's cross-examination broadly attempted to couch the JNA's activities as simply "raising the level of combat readiness" in light of the proliferation of hostile organizations such as the Croatian National Guards Force and the Patriot League (an armed coalition of Muslim soldiers in Bosnia). It was clear to the Chamber, however, that Milosevic was using his cross-examination time to speech-make to the gallery (which was packed to capacity for the first time in several months due to visiting model-UN teams) about Bosnian and Croatian militarization. Judge Robinson delivered an unusual scolding to Milosevic, stating "normally I support your requests for time-extensions... I will not do so this time."

Comment

¶10. (C) The Milosevic trial faces a new and very tough challenge in the form of Judge May's undisclosed illness. In a courtroom of large personalities, May emerged long ago as the dominant personality -- holding the prosecution to schedules, keeping Milosevic on a fairly short leash but allowing him reasonable room to represent himself, and generally maintaining decorum in the face of a difficult environment. His absence would be a significant loss, even if a substitute judge were to be appointed. Moreover, a decision to proceed with a substitute judge is subject under the Tribunal Rules to an appeal directly to the full bench of the appeals chamber. Even if such an appeal were denied (as is more likely than not), the public perception of the trial may well be tainted.

¶11. (C) In the trial chamber itself, the week presented a juxtaposition of the two sides of the Milosevic prosecution: On one side, observers saw the sober, careful presentation of expert witnesses designed to explain to the chambers the complex nature of Milosevic's relationship to Bosnian crimes and Belgrade's military relationship with Bosnian Serb forces. On the other, the long-simmering personality clash between Nice and Groome continued to roil the prosecution team. The options for Carla Del Ponte, who has tended to play one off against the other and thereby contributed to this tension, are not appealing: if she removes Nice (extremely unlikely), she risks a major media storm, as the removal of the public face of the prosecution would prove to be a story of some note. Yet if she removes Groome, she will lose the prosecutor most versed in the Bosnia counts -- which are, incidentally, the hardest of the indictments to prove.

¶12. (C) Despite the personnel crises, the still important questions concern how the prosecution will rest. Placing General Morillon last on the witness list ensures that the prosecutors will leave the chambers with a strong impression created by an important witness. Yet the possibility exists that Plavsic's testimony this week could set off fireworks that ultimately undermine the prosecution's case. The selection of Plavsic as one of the last witnesses suggests, at the least, that some members of the prosecution team are anything but confident about some key aspects of their case.
End comment.
SOBEL